IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 34088 of 2005(G)

IA.2755/05 IN CMA.115/2005 of I ADDL.DISTRICT COURT, THRISSUR

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PETITIONER:

THOMMY @ THOMAS,
S/O. CHEMMAPPILLY VARKEY, AGED 48 YEARS,
MULAYAM VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

DANIEL THOMAS,
S/O. KUMBALATHU THOMAS,
PUTHOOR, THRISSUR DISTRICT.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF COMMISSIONER'S REPORT IN I.A.2898/05 IN O.S.959/05 DT. 28.3.05.

EXT.P2 - TRUE COPY OF APPLICATION I.A.1979/05 IN CMA.115/05 BEFORE THE DIST. COURT, THRISSUR DATED 20.7.05

EXT.P3 – TRUE COPY OF COMMN. REPORT FILED IN EXT.P2 APPLICATION DT. NIL.

EXT.P4 – TRUE COPY OF THE ORDER PASSED BY THE DISTRICT COURT, THRISSUR IN I.A.2755/05 IN CMA.115/05 DT.19.11.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.34088 OF 2005

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DATED THIS THE 5TH JUNE, 2007

J U D G M E N T

I do not find any warrant for interfering with Ext.P4 in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. I am told that the C.M.Appeal preferred by the petitioner against the order of the learned Munsiff granting mandatory injunction is even now pending. The learned District Judge is directed to dispose of C.M.A.No.115 of 2005 at the earliest and at any rate within two months of receiving copy of this judgment.

2. The learned counsel for the respondent submits that negotiations are going on between the parties for settlement. It is made clear that if settlement does not come through, confirmation of Ext.P4 order by this Court will not stand in the way of the petitioner agitating the issue of necessity or otherwise of a measurement through surveyor at the time of trial. This only means that if the trial court is convinced, on the evidence which comes on record, that such a measurement is necessary, confirmation of Ext.P4 by this Court will not stand in the way of the trial court passing appropriate orders.

The Writ Petition is disposed of as above. No costs.

tgl **(PIUS C. KURIAKOSE, JUDGE)**